

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

ASHLEY MARIE OLSEN ZIESER,)

Plaintiff,)

v.)

Case No.: 5:18-CV-06103-FJG

EDWARD BEARDEN, *et al.*,)

Defendants.)

Answer and Affirmative Defenses

Defendants Edward Bearden states:

1. Defendant Bearden denies that he ever harassed, abused, or raped Plaintiff. Defendant Bearden lacks knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 1; therefore, Defendant Bearden denies each remaining allegation contained therein.
2. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 2.
3. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph

- 3.
4. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 4.
5. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 5.
6. Defendant Bearden admits the allegations contained in paragraph 6.
7. Defendant Bearden admits the allegations contained in paragraph 7.
8. Defendant Bearden admits the allegations contained in paragraph 8.
9. Defendant Bearden lacks knowledge or information to form a belief as to the truth of the allegations contained in paragraph 9; therefore, Defendant Bearden denies each allegation contained therein.
10. Defendant Bearden lacks knowledge or information to form a belief as to the truth of the allegations contained in paragraph

10; therefore, Defendant Bearden denies each allegation contained therein.

11. Defendant Bearden denies the allegations in paragraph 11.
12. Defendant Bearden denies the allegations in paragraph 12.
13. Defendant Bearden denies the allegations in paragraph 13.
14. Defendant Bearden denies the allegations in paragraph 14.
15. Defendant Bearden denies the allegations in paragraph 15.
16. Defendant Bearden denies the allegations in paragraph 16.
17. Defendant Bearden denies the allegations in paragraph 17.
18. Defendant Bearden admits that there are no surveillance cameras in the administrative office of the warden but lacks knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 18; therefore, Defendant Bearden denies the remaining allegations contained therein.
19. Defendant Bearden denies the allegations in paragraph 19.
20. Defendant Bearden denies the allegations in paragraph 20.
21. Defendant Bearden denies the allegations in paragraph 21.
22. Defendant Bearden lacks knowledge or information to form a belief as to the truth of the allegations contained in paragraph 22; therefore, Defendant Bearden denies the allegations

contained therein.

23. Defendant Bearden denies the allegations in paragraph 23.
24. Defendant Bearden denies the allegations in paragraph 24.
25. Defendant Bearden denies the allegations in paragraph 25.
26. Defendant Bearden denies the allegations in paragraph 26.
27. Defendant Bearden admits the allegations in paragraph 27.
28. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the remaining allegations contained in paragraph 28.
29. Defendant Bearden denies the allegations related to Defendant Bearden sexually assaulting Plaintiff. The remaining allegations in paragraph 29 contain legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the remaining allegations contained in paragraph 29.

Section 1983 Claims

COUNT I – Against Defendant Bearden

30. Defendant Bearden incorporates his responses to each previous paragraph as if fully set forth herein.
31. This paragraph contains legal conclusions, not statements of fact;

therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 31.

32. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 32.

33. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 33.

34. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 34.

COUNT II – Against Defendant Sturm

35. Defendant Bearden incorporates his responses to each previous paragraph as if fully set forth herein.

36. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph

- 36.
37. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 37.
38. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 38.
39. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 39.
40. Defendant Bearden lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40; therefore, Defendant Bearden denies each allegation contained therein.
41. Defendant Bearden denies the allegations in paragraph 41.
42. Defendant Bearden lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42; therefore, Defendant Bearden denies each

allegation contained therein.

43. Defendant Bearden denies the allegations in paragraph 43.
44. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 44.
45. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 45.
46. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 46.
47. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 47.
48. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph

48.

49. This paragraph contains legal conclusions, not statements of fact; therefore, no response is required. To the extent a response is required, Defendant Bearden denies the allegations in paragraph 49.

50. Paragraph 50 contains a request for relief, not statements of fact; therefore, no response is required.

51. To the extent a response to the WHEREFORE clause following paragraph 50 is required, Defendant Bearden denies the allegations in the WHEREFORE clause.

Jury Trial Demand

Defendant Bearden hereby demands a jury trial.

Affirmative Defenses

1. Plaintiff has failed to state a claim upon which relief can be granted. This suit should therefore be dismissed pursuant to Fed. R. Civ. P. 12(b)(6).
2. Plaintiff's claims against Defendant Bearden are barred by qualified immunity and good faith immunity. Defendant Bearden did not "violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Pearson v. Callahan*, 555 U.S. 223, 232 (2009).

3. Plaintiff failed to mitigate her damages, and therefore her claim is barred in whole, or in part.
4. Plaintiff's claims are barred by the doctrine of merger in that they assert more than one claim but the injury and the damages are the same for each claim, and Plaintiff is not permitted to recover more than once for any injury. Any award from a jury must be merged to prevent a plaintiff from gaining a double recovery.
5. Plaintiff's injuries and damages, if any were directly caused or directly contributed to by her own fault, negligence, or intentional acts.
6. Plaintiff's injuries and damages, if any, were caused by Plaintiff or the acts of individuals and entities other than Defendant Bearden, and who were beyond the control of Defendant Bearden.
7. All actions that Defendant Bearden may have taken toward Plaintiff were done in compliance with all applicable laws.
8. Plaintiff's claims against Defendant Bearden are barred by the applicable statute of limitations.
9. Plaintiff has failed to plead sufficient facts to justify an award of punitive damages.
10. An award of punitive damages would violate Defendant Bearden's Due Process rights.

11. Defendant Bearden incorporates by reference each and every additional affirmative defense that may be uncovered or made known during the investigation and discovery of this case. Defendant Bearden specifically reserves the right to amend this answer to include affirmative defenses at any time they are discovered.

Accordingly, Defendant Bearden moves for dismissal of Plaintiff's claims with prejudice and for such further relief as the Court deems just and proper.

Respectfully submitted,

JOSHUA D. HAWLEY
Attorney General of Missouri

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Certificate of Service

I hereby certify that on September 10, 2018, I filed the foregoing electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon all counsel of record.

/s/ Nicolas Taulbee
Assistant Attorney General